

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

**GREEN PARTY OF MICHIGAN,
LIBERTARIAN PARTY OF MICHIGAN,
REFORM PARTY OF MICHIGAN, METRO
TIMES, INC., and DAVID FORSMARK,
d/b/a WINNING STRATEGIES,**

Plaintiffs,

v.

**MICHIGAN SECRETARY OF STATE TERRI
LYNN LAND, in her official capacity,**

Defendant.

Case: 2:08-cv-10149
Judge: Edmunds, Nancy G
Referral MJ: Whalen, R. Steven
Filed: 01-11-2008 At 08:46 AM
CMP GREEN PARTY V MI SEC OF STATE (LMW)

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMPLAINT

For their Complaint, Plaintiffs state as follows:

INTRODUCTION

1. This case is a challenge to M.C.L. §168.615c, which requires the Michigan Secretary of State to provide to the chairpersons of the two major political parties a file containing all of the political party preference declarations of the persons who vote in the January 15, 2008 Michigan Presidential Primary. The statute authorizes the two major parties to make use of this information for virtually any purpose which “supports” the parties’ “political activities.”
2. The information provided to the two major parties is not provided to Plaintiff Third Parties or other political parties. The information is exempted from Michigan’s Freedom of Information Act (FOIA). Use of the information by anyone other than the two major parties, including news organizations, is prohibited and punishable as a criminal misdemeanor.
3. Plaintiffs allege that this discriminatory scheme violates their rights under the Equal Protection Clause of the 14th Amendment and their rights under 42 U.S.C. §1983.
4. Plaintiff Metro Times, Inc. alleges that the statute violates its First Amendment right to access certain information of public interest and to report on this information without fear of criminal prosecution.

JURISDICTION AND VENUE

5. Plaintiffs bring this action pursuant to the First and Fourteenth Amendments to the United States Constitution, Article I, §5 of the Michigan Constitution, and 42 U.S.C. §§1983 and 1988, seeking declaratory and injunctive relief. This Court has jurisdiction over the claims pursuant to 28 U.S.C. §§1331, 1343, 2201 and 2202.

6. Venue is proper in the Eastern District of Michigan, Southern Division, pursuant to 28 U.S.C. §1391(b), because Defendant conducts business in the District, Plaintiffs Metro Times, Inc., Green Party of Michigan and David Forsmark, d/b/a Winning Strategies, all reside in the Eastern District, and a substantial part of the events or omissions giving rise to the claim occurred in the District.

PARTIES

7. Plaintiff Green Party of Michigan is a political party qualified for the statewide ballot in Michigan which nominates and supports candidates for a variety of federal, state and local offices. It is considered a “minor” party for purposes of Michigan election law.
8. Plaintiff Libertarian Party of Michigan is a political party qualified for the statewide ballot in Michigan which nominates and supports candidates for a variety of federal, state and local offices. It is considered a “minor” party for purposes of Michigan election law.
9. Plaintiff Reform Party of Michigan is a political party which has nominated and supported candidates for a variety of federal, state and local offices.
10. Plaintiff Metro Times is a weekly newspaper published in Detroit, Michigan which is distributed widely throughout the state. It reports on a variety of issues, including political and governmental matters.
11. Plaintiff David Forsmark, d/b/a/ Winning Strategies, is a professional political consultant who provides services to a variety of political organizations and individual candidates in Michigan.
12. Defendant Terri Lynn Land is the Michigan Secretary of State and, in that capacity, is responsible for the conduct of elections and administration of election laws in the State of Michigan.

FACTUAL ALLEGATIONS

13. In 2007, the Michigan Legislature enacted M.C.L. §168.615c, which sets forth procedures to be employed in the conduct of Michigan's Presidential Primary to be held on January 15, 2008 (hereinafter "Primary").
14. Subsection (1) of the statute (M.C.L. §168.615c(1)) requires each voter to "indicate in writing, on a form prescribed by the secretary of state, which participating political party ballot he or she wishes to vote when appearing to vote" in the Primary (hereinafter "party preference").
15. Subsection (1) further provides that "the secretary of state shall prescribe procedures intended to protect or safeguard the confidentiality of the participating political party ballot selected by an elector consistent with this section."
16. Subsection (3) (M.C.L. §168.615c(3)) requires Defendant Secretary of State to "develop a procedure for city and township clerks to use when keeping a separate record at a presidential primary that contains the printed name, address, and qualified voter file number of each elector and the participating political party ballot selected by that elector at the presidential primary."
17. Subsection (4) (M.C.L. §168.615c(4)) appears to mandate confidentiality for the voter's party preference by excluding such information from Michigan's Freedom of Information Act ("FOIA") 1976 PA 442, MCL §§15.231 to 15.246, and by providing that it "shall not be disclosed to any person for any reason."
18. Subsection (4) provides, however, that the guarantee of confidentiality applies "except as otherwise provided in this section."
19. The exception to Subsection (4) is Subsection (5) (M.C.L. §168.615c(5)), which requires

Defendant Secretary of State to provide the party preference information gathered pursuant to Subsections (1) and (3) to the chairperson of each of the Primary's "participating political part[ies]."

20. The party preference information must be provided by Defendant to the chairpersons of the "participating political part[ies]" "within 71 days" of the Primary. The 71st day following the Primary is March 27, 2008.
21. The only political parties qualifying as a "participating political party" for purposes of the Primary are the Democratic and Republican parties.
22. Michigan Elections Director Christopher Thomas, an employee of Defendant, has estimated that as many as 1.5 million or more eligible Michigan voters will participate in the Primary, including Democrats and Republicans. ("Primary is sizing up to be big draw." Detroit Free Press, December 26, 2007.)
23. The party preferences of all of these 1.5 million or more voters are required to be provided to the chairperson of the Michigan Democratic Party and to the chairperson of the Michigan Republic Party, not just the preferences of those voters who named each chairperson's respective party.
24. Subsection (8) (M.C.L. §168.615c(8)) grants the two major parties the virtually unfettered right to use the party preference information for almost any purpose a political party might have, allowing them to use it "to support political party activities by that participating political party, including, but not limited to, support for or opposition to candidates and ballot proposals. A participating political party may release the information transmitted to the participating political party under subsection (6) to another person, organization, or vendor for the purpose of supporting political party activities by

that participating political party, including, but not limited to, support for or opposition to candidates or ballot proposals.”

25. The statute permits the major political parties to use the party preference information for the full range of political activities, including, but not limited to: mailing unsolicited campaign material; door-to-door canvassing; telephone polling; so-called “robocalling” – in which recorded calls are placed by computers; fundraising solicitations; and get-out-the-vote efforts.
26. Because Michigan law does not otherwise require registered voters to declare a party preference, reliable information regarding the party allegiance of registered voters is not readily available.
27. Evidence of the party preference of voters is valuable to political parties, individual candidates, citizen groups supporting or opposing ballot proposals, political consultants, news media, researchers, other specialized groups and members of the public.
28. In contrast to the unfettered use of the party preference information by the two major parties, M.C.L. §168.615c(11) makes it a criminal offense for any other person to use the party preference information. Specifically, it states: “Any person who uses the information indicating which participating political party primary ballot an elector selected at a presidential primary for a purpose not authorized in this section is guilty of a misdemeanor punishable by a fine of \$1,000.00 for each voter record that is improperly used or imprisonment for not more than 93 days, or both.”
29. M.C.L. §168.615c denies to Plaintiffs Green Party of Michigan, Libertarian Party of Michigan and Reform Party of Michigan (collectively, the “Third Parties”) access to and use of party preference information which they could otherwise use in furthering their

political party activity, including such things as identifying potential supporters and opponents, targeting the distribution of information about the Third Parties, focusing campaign and get-out-the-vote activities, etc.

30. Plaintiff Metro Times, Inc. has published a number of articles about the structure and rules governing the Primary and the use of party preference information.
31. Plaintiff Metro Times, Inc. intends to publish additional articles regarding the conduct of the Primary and participation in the Primary, and M.C.L. §168.615c may subject Plaintiff Metro Times, Inc. and/or its reporters and editors to criminal penalties for engaging in legitimate First Amendment activities, creating a chilling effect on those activities.
32. If not for M.C.L. §168.615c, Plaintiff Metro Times would seek party preference declarations from certain precincts under FOIA in an attempt to determine if there was any organized effort to generate crossover voting in the Primary.
33. Because M.C.L. § 168.615c bars access to these declarations and imposes criminal sanctions on unauthorized use of the declarations, the Metro Times will not be able to obtain information indicating if political figures and others have participated in crossover efforts.
34. If this Court grants the relief that Plaintiffs seek and declares portions of M.C.L. §168.615c unconstitutional, the nonseverable Section (4) (exempting party preference information from FOIA), will also fail, making all preference declarations available to the Metro Times as public records.
35. Plaintiff Forsmark's services as a political consultant include providing information regarding the likely party preferences of voters which may be used by his clients to target and refine their campaigns and other political efforts.

36. The stated party preferences of in excess of one million Michigan voters are an extremely valuable resource which Plaintiff Forsmark could use in the provision of consulting services to his clients.
37. Denying access to and use of the party declaration information to Plaintiff Forsmark, while allowing the two major parties to give or lease this information to various candidates, campaigns, political groups and vendors will seriously impair his ability to successfully market his services to his potential customers.
38. If this Court grants the relief that Plaintiffs seek and declares portions of M.C.L. §168.615c unconstitutional, the nonseverable Section (4) (exempting party preference information from FOIA), will also fail, making all preference declarations available to Plaintiff Forsmark as public records.

**COUNT I – VIOLATION OF THE EQUAL PROTECTION CLAUSE
OF THE FOURTEENTH AMENDMENT AND 42 U.S.C. § 1983**

39. Plaintiffs incorporate by reference all prior paragraphs as though repeated herein.
40. M.C.L. §168.615c unlawfully provides valuable information, specifically, party preference declarations, generated by the State of Michigan in the conduct of its election process, solely to the two major political parties of the State and denies access to and use of that information to all other citizens of the state.
41. There is no compelling state interest that would justify providing this valuable party preference information solely to the two major political parties, and denying such access to and use of that information to minor political parties, the news media, private political consultants and others.
42. There is no legitimate state interest in providing this valuable party preference information solely to the two major political parties, and denying such access to and use

of that information to minor political parties, the news media, private political consultants and others.

43. Providing party preference declarations solely to the major political parties and not to third parties, news media, private political consultants and others is not narrowly tailored, rationally related or necessary to achieve whatever interest the state seeks to advance through M.C.L. §168.615c.
44. Plaintiff Third Parties are damaged by being denied use of information that is valuable in the conduct of campaigns and other political activities, while their major party competitors have full use of the information.
45. Plaintiff Metro Times, Inc. is damaged by being denied use of information that is useful in its coverage in the political affairs of its community and the state.
46. Plaintiff Forsmark is damaged by being denied use of information which is important for him to possess to provide the services that he offers to his clients as a political consultant, while that information can be provided by the major political parties.
47. In providing voters' party preference to the major political parties and forbidding its use by all others, M.C.L. §168.615c violates the Equal Protection Clause of the Fourteenth Amendment, as well as 42 U.S.C. §1983.

COUNT II – VIOLATION OF THE FIRST AMENDMENT

48. Plaintiffs incorporate by reference all prior paragraphs as though repeated herein.
49. M.C.L. 168.615c unlawfully prohibits the use of party preference information by Plaintiff Metro Times, Inc. and other news media in reporting and commenting upon matters of public interest and concern, in violation of First Amendment guarantees of freedom of speech and freedom of the press and in violation of the Michigan Constitution, Article I,

§5, in that it selectively delimits the audience for newsworthy information.

50. The statutory scheme of M.C.L. 168.615c is overbroad, because it reaches and restricts conduct which is protected by the free speech clauses of both the United States Constitution and the Constitution of Michigan.
51. M.C.L. 168.615c is void for vagueness, because it does not provide adequate notice to news organizations and others as to what conduct is proscribed and would subject a person to the statute's criminal penalties.

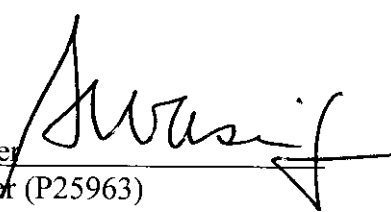
WHEREFORE, Plaintiffs ask this Court to grant the following relief:

- A. Declare that M.C.L. §168.615c, subsections (5), (6), (7), (8), (9), (10) and (11) are unconstitutional;
- B. Permanently enjoin Defendant Secretary of State from carrying out the provisions of M.C.L. §168.615c, subsections (5) and (6);
- C. Order that Defendant pay Plaintiffs' costs and attorneys fees, pursuant to 42 U.S.C. §1988; and

D. Grant such other relief that the Court deems just and equitable.

Respectfully submitted,

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Dated: January 10, 2008
KH103227

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: Wayne

JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

GREEN PARTY OF MICHIGAN, LIBERTARIAN PARTY OF MICHIGAN, REFORM PARTY OF MICHIGAN, METRO TIMES, INC., AND DAVID FORSMARK

(b) County of Residence of First Listed Washtenaw

(c) Attorney's (Firm Name, Address, and Telephone Number)

Stephen Wasinger (P25963) 300 Balmoral Centre, 32121 Woodward Ave, Royal Oak, MI 48073 (248) 554-6306

DEFENDANTS

MICHIGAN SECRETARY OF STATE TERRI LYNN LAND, IN HER OFFICIAL CAPACITY

County of Residence of First Listed Ingham

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item 111)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Incorporated or Principal Place of Business in This State, Case: 2:08-cv-10149, Judge: Edmunds, Nancy G, Referral MJ: Whalen, R. Steven, Filed: 01-11-2008 At 08:46 AM, CMP GREEN PARTY V MI SEC OF STATE (LMW)

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS. Includes categories like Insurance, Marine, Negotiable Instrument, Medicare Act, etc.

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district, 6 Multi district Litigation, 7 Appeal to District Judge from Magistrate

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Complaint, under 28 USC 1983, challenging constitutionality of MCL 168.615c (PA 52) under First and Fourteenth Amendments

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND, CHECK YES only if demanded in complaint, JURY DEMAND: Yes No

VIII. RELATED CASE(S) INSTRUCTIONS: IF ANY

JUDGE, DOCKET NUMBER

DATE

January 11, 2008

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of Stephen Wasinger

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
